

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

<b>HORACIO LICANO PACHECO,</b>	§	
<b>Reg. No. 81458-280,</b>	§	
<b>Movant,</b>	§	
	§	<b>EP-14-CV-384-KC</b>
<b>v.</b>	§	<b>EP-11-CR-1827-KC-6</b>
<b>UNITED STATES OF AMERICA,</b>	§	
<b>Respondent.</b>	§	

**ORDER WITHDRAWING REFERRAL TO MAGISTRATE JUDGE AND GRANTING  
LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Movant Horacio Licano Pacheco seeks leave to proceed *in forma pauperis* with an appeal of the Court's memorandum opinion and order and final judgment denying his motion under 28 U.S.C. § 2255 to vacate, set aside, or correct a sentence (ECF No. 1020).<sup>1</sup> For the reasons outlined below, the Court will grant Pacheco's motion.

To proceed *in forma pauperis* on appeal, pursuant to Federal Rule of Appellate Procedure 24, a party must be economically eligible and take his appeal in good faith.<sup>2</sup> A prisoner establishes his economic eligibility by submitting a certified copy of his prison trust fund account statement for the six-month period immediately preceding the filing of his legal action.<sup>3</sup> A party demonstrates his good faith when he seeks appellate review of any non-frivolous issue, but

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<sup>1</sup> "ECF No." in this context refers to the Electronic Case Filing number for documents docketed in EP-11-CR-1827-KC-6.

<sup>2</sup> Fed. R. App. P. 24(a); *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983).

<sup>3</sup> Cf. 28 U.S.C. § 1915(a)(2) (2012) (requiring a prisoner seeking to appeal a judgment in a civil action without prepaying fees to file a certified copy of the trust fund account statement).

he need not show probable success on the merits.<sup>4</sup> The reviewing court may only examine whether the appeal involves “legal points arguable on their merits (and therefore not frivolous).”<sup>5</sup>

Pacheco provides information concerning his prisoner trust fund account which indicates he is economically eligible to proceed *in forma pauperis*. Moreover, the Court finds that Pacheco may raise a non-frivolous or colorable issue on appeal.

Accordingly, the Court **WITHDRAWS** the referral of this motion to the United States Magistrate Judge and **GRANTS** Pacheco’s motion to proceed *in forma pauperis*. The Court **DIRECTS** the Clerk of the District Court to immediately notify the parties and the Fifth Circuit Court of Appeals of this order.

**SO ORDERED.**

**SIGNED** this 13th day of December, 2016.



KATHLEEN CARDONE  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup> *Howard*, 707 F. 2d at 220.

<sup>5</sup> *Id.* (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).